

People v Hines

2015 NY Slip Op 32675(U)

March 4, 2015

County Court, Westchester County

Docket Number: 14-0277

Judge: Barbara G. Zambelli

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<p>FILED AND ENTERED ON MARCH <u>4</u>, 2015 WESTCHESTER COUNTY CLERK</p>

COUNTY COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

THE PEOPLE OF THE STATE OF NEW YORK DECISION & ORDER

- against -

ERIC HINES,

Defendant.

Indictment No. 14-0277

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TIMOTHY X IDONI
COUNTY CLERK
COUNTY OF WESTCHESTER

ZAMBELLI, J.

The defendant has been indicted for the crimes of Manslaughter in the First Degree, Criminal Possession of a Weapon in the Third Degree, Resisting Arrest and Criminal Possession of a Controlled Substance in the Seventh Degree, allegedly committed on or about February 4, 2014 in the County of Westchester. He now moves by notice of motion with supporting affirmation and memorandum of law for omnibus relief. The People's response consists of an affirmation in opposition and a memorandum of law. Upon consideration of these papers, as well as review of the grand jury minutes and exhibits and the consent discovery order entered in this case, the motion is disposed of as follows:

1. MOTION TO INSPECT/DISMISS/REDUCE

This application is granted to the extent that the Court has conducted an in camera inspection of the minutes of the grand jury proceedings. Count Four, Criminal Possession of a Controlled Substance in the Seventh Degree is dismissed on consent of the People. Upon review of the evidence presented, this Court finds that all other counts were

supported by sufficient evidence and that the instructions given were appropriate. There was no other infirmity which would warrant a dismissal of the indictment. Accordingly, that branch of the motion which seeks dismissal of the indictment is denied. The Court further finds no facts which would warrant releasing any portion of the minutes of the grand jury proceedings to the defense (see, CPL §210.30[3]).

2. MOTION FOR BILL OF PARTICULARS

This motion is denied. The bill of particulars which was served pursuant to and simultaneously with the consent order was sufficient to adequately inform the defendant of the substance of his alleged conduct and to enable him to prepare and conduct a defense (see, People v. Byrnes, 126 A.D.2d 735, 736; see also, People v. Watts, 84 N.Y.2d 948; People v. Gargano, 222 A.D.2d 694; People v. Lopez, 175 A.D.2d 267). The information requested by the defendant need not be disclosed (see, People v. Sanchez, 278 A.D.2d 889).

3. MOTION FOR DISCOVERY AND DISCLOSURE OF MATERIAL AND FAVORABLE INFORMATION /DEALS AND AGREEMENTS

This application is granted to the limited extent of ordering that the People are to provide the defendant with materials and information, the disclosure of which is required pursuant to the provisions of CPL §240.44 and §240.45. As to the defendant's demand for exculpatory material, the People have indicated their awareness of their continuing obligation to disclose any such material immediately upon its discovery. The People further recognize their duty to comply with People v. Rosario, 9 N.Y.2d 286; CPL §240.44, §240.45. Where a question exists as to whether a particular item should be disclosed, they are directed to submit the material or information to the Court, which will conduct an

in camera examination to resolve the issue.

The defendant's demand for disclosure of deals and agreements is granted to the extent they exist. Defendant's demand for disclosure of items or information to which he is entitled pursuant to the provisions of CPL §240.20(1) (a) through (i) is granted upon the People's consent. The application is otherwise denied as it seeks items or information which are beyond the scope of discovery and the defendant has failed to show that such items are material to the preparation of his defense (CPL §240.40 [1][a]).

4. MOTION TO SUPPRESS PRIOR BAD ACTS (SANDOVAL AND VENTIMIGLIA AND FOR CPL §240.43 NOTICE)

Granted on consent of the People to the extent that this Court directs that a hearing be held immediately prior to trial. Prior to the commencement of jury selection, the People will disclose to defendant all specific instances of his prior uncharged crimes and bad acts they expect to introduce at trial for impeachment purposes (see, CPL §240.43). Defendant must then sustain his burden of informing the Court of the prior convictions and misconduct which might unfairly affect him as a witness in his own behalf (see, People v. Matthews, 68 N.Y.2d 118 , 121-122). In the event the People seek to introduce defendant's prior bad acts on their direct case, the burden is on the People to seek a Ventimiglia hearing to determine the admissibility of such evidence (see, People v. Ventimiglia, 52 N.Y.2d 350)

5. SPEEDY TRIAL MOTION (CPL §30.30) AND SEVERANCE

Defendant moves to dismiss the misdemeanor under Count Four on the grounds that he was denied his statutory right to a speedy trial and further that count should be severed. Defendant's motion is moot based on the People's consent to dismiss that count of the indictment.

6. MOTION TO PRECLUDE

Defendant moves to preclude the People from adducing any statement or identification evidence against him which has not been including in a CPL §710.30 notice.

Defendant's motion is denied with leave to renew before the hearing/trial court.

7. MOTION TO STRIKE NOTICE STATEMENT

The People have filed four CPL §710.30 notices of statements allegedly made by the defendant. Defendant contends the notices are insufficient for failure to set out the circumstances under which the statements were made. The People counter that the notices are sufficient inasmuch as they provide the time, place and substance of the statements as well as an electronic copy of the defendant's full statement.

The defendant's motion is denied. The language in the notices served by the People in accordance with CPL §710.30 informed the defendant of the time, place and manner in which the statements were made (CPL §710.30[1]; see, People v. Lopez, 84 N.Y.2d 425; People v. Hartley, 244 A.D.2d 712).

In the affirmation in opposition, the People contend that the defendant waived his right to challenge the sufficiency of the CPL §710.30 notices by moving in the alternative to suppress noticed statement. However, a defendant may move in the alternative to suppress without waiving a preclusion claim, so long as the suppression claim is not litigated to a final determination (see, People v. Kirkland, 89 N.Y.2d 903; People v. Smith, 283 A.D.2d 189; People v. Figueroa, 278 A.D.2d 139; People v. Heller, 180 Misc2d 160; Cf. People v. Smith, 8 Misc3d 441).

8. MOTION TO SUPPRESS STATEMENTS

Defendant alleges he was near the alleged victim and detained by the police at

gunpoint. He moves to suppress his statements allegedly made on February 4, 2014 in the early morning hours in the White Plains Police Department on the grounds they were made while he was subjected to custodial interrogation without an attorney and without Miranda rights having previously been given. He requests a Huntley hearing. The People assert the statements were either in response to investigative police questioning or spontaneously made by defendant.

Defendant's motion is granted to the extent that the Court will conduct a hearing prior to trial to determine whether Miranda warnings were necessary and, if so, whether the defendant was so advised and made a knowing, intelligent and voluntary waiver thereof, or whether the statement was otherwise involuntarily made within the meaning of CPL §60.45.

As to defendant's allegation he was detained unlawfully, no sworn allegations of fact whatsoever are set forth in support of this conclusory allegation and furthermore defendant does not request a hearing on same. Accordingly, no hearing is warranted on this ground (see, People v. France, 12 N.Y.3d 790 (2009); People v. Jones, 95 N.Y.2d 721; People v. Mendoza, supra; People v. Kemp, 262 A.D.2d 333; People v. Anderson, 253 A.D.2d 636; CPL §710.60[3][b]; see also, People v. Scully, 14 N.Y.3d 861 (2010)).

This decision constitutes the Order of the Court.

Dated: White Plains, New York
March 4, 2015


BARBARA G. ZAMBELLI
COUNTY COURT JUDGE